

APPEAL NO. 031752  
FILED AUGUST 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 10, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_; that the claimant had disability from November 6 until December 2, 2002; and that the appellant self-insured (referred to as carrier herein) waived the right to contest compensability. The carrier appealed, arguing that the determinations of the hearing officer are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Reversed and a new decision rendered in part and affirmed in part as reformed.

**INJURY AND DISABILITY**

The claimant testified that she injured her right ankle when she slipped and fell stepping down from the school bus on \_\_\_\_\_. The hearing officer determined that the claimant sustained a compensable injury and that she had resulting disability. The carrier argues that an injury sustained from mere walking is not compensable and argues alternatively that the claimant's previous compensable injury to her left knee in 2001 caused her to fall and any resulting injury should be considered a follow-on injury to the 2001 date of injury. We have previously held that walking up and down stairs is more than "merely walking" and can support the finding of an injury in the course and scope of employment. Texas Workers' Compensation Commission Appeal No. 992193, decided November 17, 1999; and Texas Workers' Compensation Commission Appeal No. 002798, decided January 18, 2001. Injury and disability issues are questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's injury and disability determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

**CARRIER WAIVER**

The hearing officer erred in determining that the carrier waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021. Section 409.021(a) provides that the insurance carrier is to begin the payment of benefits or notify the Texas Workers' Compensation Commission (Commission) and the claimant of its refusal to pay benefits within seven days after receiving written notice

of the injury (the "pay or dispute" provision). The hearing officer determined that the carrier first received written notice of the claimed injury on \_\_\_\_\_, and that on November 12, 2002, the carrier prepared a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) denying compensability. The hearing officer further determined that the TWCC-21 is dated stamped November 12, 2002, but the stamp lacks sufficient indicia to conclude that the Commission date stamped the TWCC-21 on November 12, 2001. We disagree. The stamp on the TWCC-21 contained in the carrier's exhibit No. 1 reads as follows: Acknowledged November 12, 2002 Not Filed TWCC. Advisory 2002-15, dated September 12, 2002, was issued by the Commission soon after Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) became final, and continued the practice of providing an acknowledgement of a carrier's agreement to pay benefits. The Advisory provided:

The Commission will continue to provide an acknowledgement of an insurance carrier's agreement to pay benefits as they accrue and are due. The insurance carrier must check the appropriate box in item number 1 on a TWCC-21 form (hereinafter referred to as "cert 21s") and forward the completed form to Texas Workers' Compensation Commission, 4000 S. IH-35, Cert 21s - MS 93A, Austin, Texas 78704. The acknowledged form will be returned to the insurance carrier via the insurance carrier's representative's box at TWCC's Central Office. Since the TWCC will not retain copies of these cert TWCC 21 forms, insurance carriers will be responsible for providing the TWCC acknowledged forms at any subsequent dispute.

We read the Advisory as clearly placing the burden on the carrier to prove that it has complied with the decision in the Downs case. The carrier can comply with Downs by submitting a dispute within seven days. In this case the carrier submitted a dispute within seven days, despite the fact it was not filed there is evidence that the Commission acknowledged its receipt within seven days of the carrier's receipt of written notice of the claimed injury. Therefore there is evidence that the carrier took some action within seven days after receiving written notice of the claimed injury. The second TWCC-21 submitted by the carrier received by the Commission on December 10, 2002, contained the same language disputing the injury as the initial advisory acknowledged on November 12, 2001. Based on these facts, we reverse the hearing officer's determination that the carrier waived the right to contest compensability of the \_\_\_\_\_, injury and render a decision that the carrier did not waive the right to contest compensability of the \_\_\_\_\_, injury.

We reform Conclusion of Law No. 4 to conform to Finding of Fact No. 6 and the decision that the claimant's disability was from November 6 until December 2, 2002, rather than from \_\_\_\_\_, and continuing through the date of the CCH.

The hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_, and had disability from November 6 until December 2, 2002, is affirmed as reformed and the determination that the carrier waived the right to

contest compensability is reversed and a new decision rendered that the carrier did not waive the right to contest the compensability of the \_\_\_\_\_, injury.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT  
(ADDRESS)  
(CITY) TEXAS (ZIP CODE).**

\_\_\_\_\_  
Margaret L. Turner  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge